



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 03495-98

27 May 1999

SSGT [REDACTED] N JR USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of the fitness report for 14 September 1996 to 24 October 1997, reference to your relief for cause of 23 September 1997, and all documentation relating to your nonjudicial punishment (NJP) of 17 September 1997. You also requested that enclosures (19), (20) and (21) of your petition be added to your record.

Your request to add documents to your record was not considered, since you have not exhausted your administrative remedies. You may ask Headquarters Marine Corps (MMSB) to file the documents of interest.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 23 April 1998, and the advisory opinions from HQMC JAM4 and MMEA-85, dated 13 and 27 July 1998, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinions.

The Board was unable to find that item 18 of the contested fitness report should have been marked to show the report was based on "infrequent" rather than "frequent" observation,

noting that observation need not be direct. They were likewise unable to find the reviewing officer's concurrence with the reporting senior was unjust, noting the reviewing officer acknowledged having had only "limited" observation. The Board was unable to find the reporting senior did not take due account of information in pre-inspection reports, or your side of the story concerning the problems identified by the semiannual inspection of June 1997. The Board was not persuaded that any of the other derogatory matters noted by the reporting senior were either inaccurately or unfairly cited. They were not convinced that you and the reporting senior had a "personality conflict." In any event, they observed it is a subordinate's obligation to get along with superiors. Finally, the Board was unable to find the reporting senior placed too much emphasis on your NJP, nor could they find the report at issue was used as a disciplinary tool.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

3495-98

IN REPLY REFER TO:
1610
MMER/PERB
23 Apr 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED], USMC

Ref: (a) SSgt [REDACTED] D Form 149 of 17 Feb 98
(b) MCO P1610.7D w/Ch 1-3

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 21 April 1998 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960914 to 971024 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.
2. The petitioner argues that he was punished twice for the same offense (i.e., via the relief for cause and the imposition of nonjudicial punishment (NJP)). To support his appeal, the petitioner provides voluminous documents which he believes substantiates his claim.
3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:
 - a. Contrary to what the petitioner may believe, the relief for cause and the imposition of NJP do not constitute "double jeopardy." These are separate and distinctly different administrative actions where one is not dependent on the other. Each one properly documents what occurred.
 - b. Despite the substantial amount of documentation furnished with reference (a), there is absolutely no evidence whatsoever to support his claim. The bottom line is that he violated a known curfew imposed by the U. S. Embassy [REDACTED] and was properly held accountable. That he views this as a "minor disciplinary infraction" does not somehow negate the severity of what transpired. Succinctly stated, unless and until the NJP is set aside or otherwise eliminated from the petitioner's record, removal of the fitness report is simply not warranted.
4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

13 JUL 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1995
Edition), Part V

1. We are asked to provide an opinion regarding the appropriateness of a fitness report covering the period from 14 September 1996 to 23 September 1997. The fitness report references Petitioner's 6 September 1997 relief for cause from his billet as Detachment Commander, American Embassy, [REDACTED] Burundi, and his subsequent NJP on September 1997. Petitioner argues that the relief for cause and NJP are unjust because he was, in effect, punished twice for the same offense. Petitioner requests that the fitness report be pulled from his official military records.
2. We recommend relief be denied. Our analysis follows.
3. On 17 September 1997, Petitioner was found guilty at NJP, pursuant to his guilty plea, of violating a detachment order by breaking curfew. Petitioner was sentenced to forfeit \$300.00 pay per month for 1 month, and \$150.00 of the forfeitures was suspended for 6 months. Petitioner appealed the NJP on 18 September 1997, and that appeal was denied on 23 September 1997.
4. Petitioner presents no new information that disputes the NJP or the appeal denial. Furthermore, Petitioner's "double jeopardy" argument is without merit. Both NJP and relief for cause are matters within the personal discretion of the commanding officer, and are separate and distinct command decisions. Accordingly, we concur with the 23 April 1998 opinion of the PERB, and recommend that relief be denied.

[REDACTED]

Major, U.S. Marine Corps
Assistant Head
Military Law Branch
By direction of the
Commandant of the Marine Corps

349548



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1000
MMEA-85
27 JUL 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SERGEANT [REDACTED]
U. S. MARINE CORPS

Ref: (a) CO, MSGBn Relief for Cause ltr dtd 23 Sept 97

1. The reference requested that SNM be relieved for cause. The request was received on 28 September 1997 and was approved. Subsequently, this Headquarters entered a draw case code (DCC) of M, which reflects relief for cause from Marine Security Guard duty.

2. The relief for cause was based on the Battalion Commander's loss of trust and confidence in SNM's ability to continue on the program as a Detachment Commander. It was not as a result of his subsequent non-judicial punishment. Therefore, the appropriateness of the relief for cause fitness report was within the personal discretion of the Commanding Officer. This decision is consistent with all requests of this nature.

[REDACTED]